



**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
1190 St. Francis Drive
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CONSTITUENT AGENCIES:

Environment Department
State Engineer & Interstate Stream Commission
Game and Fish Department
Oil Conservation Division
Department of Agriculture
State Parks Division
Soil and Water Conservation Commission
Bureau of Mines and Mineral Resources
Members-at-Large

Minutes of the
New Mexico Water Quality Control Commission Meeting
December 12, 2000

The New Mexico Water Quality Control Commission held its meeting on December 12, 2000, at 9:00 a.m. at the State Capitol Building, Room 321, Corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico. Acting Chairman Ritzma called the meeting to order at approximately 9:07 a.m.

Members Present:

Paul Ritzma	New Mexico Environment Department
John Whipple	State Engineer & Interstate Stream Commission
Bill Olson	Oil Conservation Division
David Johnson	State Parks Division
Julie Maitland	Department of Agriculture
Jack Kelly	Department of Game & Fish
Howard Hutchinson	Soil & Water Conservation Commission
Lynn Brandvold	Bureau of Mines & Mineral Resources
Paul Gutierrez	Member-at-Large
Conrad Keyes	Member-at-Large
Irene Juliana Lee	Member-at-Large

Others Present:

Daniel Rubin	WQCC Counsel
Tamella L. Lakes	WQCC Administrator
Dr. Jim Davis	Chief NMED/SWQB
David Hogge	NMED/SWQB
Susan Kery	Sheehan, Sheehan and Assoc.
Jay Lazarus	Glorieta Geoscience
Bruce Thomson	UNM
Erik Galloway	NMED
Steven Glass	City of Albuquerque
Steve Pierce	NMED/SWQB
Marcy Leavitt	NMED/GWQB
Larry Webb	City of Rio Rancho
Scott Bulgria	Pueblo of Sandia
John Sigler	Parsons ES (COA)
Abe Franklish	NMED/SWQB
Eric Ames	NMED/OGC

Hilary Tompkins	Pueblo of Sandia
Greg Lewis	NMED/Director
Bonnie Rabe	NM Dept. of Agriculture
Kelly Chavez	NM Dept. of Agriculture
Kelly Bitner	Neptune and Company
Reymundo Gutierrez	City of Albuquerque
Robert George	NM State University – DAB – WQTAP
Marvin Vigil	City of Espanola
Qustanidi Kessisieh	City of Santa Fe
Debbie Hughes	NMACD
Brian Shields	Amigos Bravos
Patrick Hanson	NMED/SWQB
Mike Coffman	NMED/SWQB
Mike Saladen	LANL
Bill Brancard	State Land Office
Kristen Dors	NMED/SWQB

Item 1 - Roll Call.

Tamella L. Lakes, WQCC Administrator took roll call.

Item 2 - Approval of the Agenda

Ms. Brandvold moved to approve the agenda. Mr. Kelley seconded the motion.
The motion passed unanimously.

Item 3 – Approval of the minutes of the November 14, 2000, meeting.

Mr. Olson moved to approve the November 14, 2000, minutes as amended. Mr. Johnson seconded the motion.
The motion passed unanimously.

Item 4 – Discussion and possible action on the previously approved piscicide project for Poso Creek and Castillo Creek, WQCC 00-01 (V).

Mr. Kelley stated that the Department of Game and Fish (agency) is seeking clarification from the Commission on how they wish the agency to proceed on four separate projects. Two of those projects were completed and the agency will be giving the Commission an update on those projects at the January 9, 2000, meeting. The other two projects were not completed last year due to Federal regulations, as the parties did not obtain some 404 permits. Those projects were put on hold. The agency anticipates that they will be completed next year. Mr. Kelley stated that the agency is asking if it must re-petition the Commission to continue the two projects that were not completed.

Mr. Rubin stated that he had reviewed the file and under the Commission's Standards updates are required regarding the registration of the piscicides for 2001. There are also extensive notice requirements that may pose an issue because landowners may have changed over the year. The best way to proceed is to have the agency formally re-petition the Commission. The petition must contain an update of the registration of the piscicides and a request that the Commission takes administrative notice of what it had previously approved and what is already in the file. This action would require that a new hearing be held in the area affected by the project.

Mr. Kelley stated that the agency is also planning a three-year piscicide project in the west fork of the Gila River. The agency would like to know if they must plan an annual petition or will the initial petition be sufficient for the entire three-year project.

Chairman Ritzma stated that to the best of his knowledge there is nothing in the regulations that would prevent the agency from applying for a project wide permit. The entire project plan must be included in the petition and if there were significant changes the agency would have to notice it for re-hearing.

Item 5 – Update on the Middle Rio Grande TMDL for fecal coliform and other surface water quality issues on the reach including NPDES permits.

Dr. Jim Davis, Chief, Surface Water Quality Bureau (SWQB), stated that the SWQB gave a presentation on the Middle Rio Grande TMDL to the Middle Rio Grande Conservancy District on November 13, 2000. The briefing also covered surface water quality standards and the applicability of the standards. On Tuesday, November 21, 2000, the SWQB gave a presentation to the Southern Sandoval County Arroyo Flood Control Authority on the Rio Grande TMDL, on TMDLs in general, and on phase II storm water NPDES permits. On Thursday, November 30, 2000, there was a Middle Rio Grande TMDL meeting held at the Rio Rancho City Council Chambers. Approximately 40 interested individuals representing all of the municipalities, villages and other local government sub-units including the Flood Control Districts, the Soil and Water Conservation Commission and Commissioner Hutchinson were in attendance. Five Pueblos were also represented; Sandia, Isleta, Santa Ana, Zia and San Felipe. Subsequent meetings were planned. One meeting was held on Tuesday, December 5, 2000 to exchange technical data on two particular issues that are of concern in the Middle Rio Grande, which issues are fecal coliform bacteria and arsenic. The arsenic limits that are proposed in the permits for the Village of Bernalillo and the City of Rio Rancho are of interest to the parties. On December 18, 2000 a meeting will be held in the Rio Rancho City Counsel Chambers to further discuss fecal coliform bacteria and arsenic issues. At the November 30, 2000, meeting the SWQB suggested that a professional facilitator be utilized at all planed meetings in the future so the Bureau could step out of that role.

Several comments were received on the Rio Grande TMDL. Some of the comments are quite complex and will require some time for the Bureau to evaluate.

Mr. Hutchinson asked Dr. Davis if he had any idea when or if a consensus may be reached concerning the discrepancies in standards between the Tribal Governments and the State of New Mexico. Dr. Davis stated that he had no idea if or when a consensus would be reached, but some progress had been made. This progress is demonstrated by the willingness of the parties to enter into discussions. The Bureau does not have a definite deadline in mind for the TMDL. The Consent Decree and the MOU signed by the Environment Department and EPA contemplates December 31, 2000 as the deadline for the Middle Rio Grande TMDL. However, those documents also contemplate an additional period of time to work through some of the complex issues.

Item 6 – Discussion and possible action on requesting Alternative Dispute Resolution pursuant to 40 CFR §131.7.

Mr. Olson asked if the Commission had to take action on the November 13, 2000 letter asking the Commission to invoke the Dispute Resolution. Mr. Rubin stated that the request was presented at the last meeting and the Commission did not act on it. The Commission does not need to consider it now if no one is present to re-state the request.

Ms. Hilary Tompkins, Counsel for the Pueblo of Sandia, stated that the Pueblo has presented their revised water quality standards and has gone through a comment period that closed on December 11, 2000.

Comments were received and the Pueblo is currently reviewing them, preparing a package for EPA and submitting the revised standards. The pueblo will continue to move forward with discussions outside of the Dispute Resolution process. The Pueblo believes that there are certain requirements under the Dispute Resolution regulation that have not yet been met because the parties have just entered into discussions.

Mr. Hutchinson asked Ms. Tompkins if the Pueblo is sympathetic to the current situation that Rio Rancho and Bernalillo face, and does the Pueblo understand what they are facing with their current permit application and the extension of time that has been requested for those permits. The permit application is being guided by the standards that are currently in place and EPA is under a court order to issue those NPDES permits.

Ms. Tompkins stated that she is not aware of what Sandia's position is on that matter.

Item 7 – Formal approval and adoption into the State's Water Quality Management Plan of the TMDLs for Santa Fe River (DO and pH), Cieneguilla Creek (metals Al), Cimarron River (metals Al), and Rayado Creek (stream bottom deposits).

Mr. David Hogge, TMDL Coordinator for the State of New Mexico, stated that the adoption and incorporation of TMDLs into the New Mexico State Water Quality Management Plan (NMWQMP) is required under Section 208 of the federal Clean Water Act and 40 CFR 130.6. EPA may not issue an NPDES permit that is in conflict with the State adopted NMWQMP. All TMDLs must be incorporated into the NMWQMP to have official standing. The public comment period started on October 10, 2000, and ended on November 9, 2000, 5:00 p.m. MST. The TMDLs were made available to the public at the WQCC meeting on October 10, 2000. Notices were mailed to the WQCC mailing list and to the Acequia Association. Public meetings were held in the watershed, press releases were sent out, and the TMDLs were posted on the NMED website. No formal comments were received on the Cimarron River, Rayado Creek and the Cieneguilla Creek TMDLs. Three comments were received on the Santa Fe River TMDL. Those comments did not cause any technical changes to be made to the document.

Mr. Whipple raised concerns over the adequacy of pH and DO modeling presented in the Santa Fe River TMDL and asked Mr. Hogge if the TMDLs are subject to change as improved modeling tools become available. Mr. Hogge stated that EPA in Dallas did the modeling for the Santa Fe River using EPA's standard model, and that it would be hard for the Bureau to comment on the modeling. Mr. Hogge stated that the TMDL is a dynamic document.

Mr. Whipple asked that if some beneficial impacts to water quality were discovered through best management practices (BMPs), could the TMDL be revised. Mr. Hogge stated that it would not necessarily lead to a revision in the TMDL. The Bureau would revisit the watershed monitoring every five years to see if the implemented BMPs have had a positive, negative, or no effect at all to water quality. If the BMPs were not working, then revised action would be taken as far as what BMPs might be implemented to see what will work. There are no absolutes as far as non-point source BMPs are concerned.

Mr. Whipple stated that the situation that was analyzed in the Santa Fe River TMDL seems like a point-source problem. Mr. Whipple asked whether there are other conditions that may be considered if you look at the impacts from storm water run-off within the city of Santa Fe. Mr. Hogge stated that the Santa Fe River TMDL situation is problematic because the headwaters are an effluent. You cannot classify the Santa Fe River as being a typical northern New Mexico stream. The wastewater treatment plant is doing better than their permit requires as far as their effluent is concerned. They are well below their limits, and are discharging fairly good quality water into the Santa Fe River. The problem occurs downstream where a very broad channel does not have the upstream flushing effects that most streams have to keep the riparian area healthy and viable. There are grants that have been awarded for some upper watershed projects that are attempting to improve the upstream watershed conditions of the River.

Mr. Whipple stated that the State Engineer Office and the Interstate Stream Commission are concerned about the effects of riparian restoration projects on hydrology, water supply, water rights and compact delivery requirements. This is an issue that the State Engineer is going to have to look at and address statewide. Mr. Whipple asked Mr. Hogge if the Santa Fe River riparian restoration project is ongoing and whether the TMDL requires that the project be implemented. Mr. Hogge stated that the project is ongoing and that the TMDL describes the project as a BMP that is being implemented regardless of the TMDL and that may provide water quality benefits. The TMDL does not require the project to be implemented.

Mr. Johnson asked Mr. Hogge if the only reason he is explaining the Santa Fe River riparian project of the Forest Guardians and the City of Santa Fe is because public comment was received requesting that a description of the project be included in the TMDL, and that the project has nothing to do with the TMDL study. Mr. Hogge stated that Mr. Johnson was correct.

Mr. Hutchinson asked if the projects being implement upstream are above the treatment plant. Ms. Dors stated that there are projects in the upper watershed, the middle watershed and below the watershed.

Mr. Hutchinson asked if there was any fecal coliform detected in the storm water discharges. Ms. Dors stated that stormwater discharges are not sampled for fecal coliform in town in the dry riverbed. Fecal coliform samples were taken right below the treatment plant where some animal activity exists, and where a trailer park exists. None of the samples exceeded 27 fecal coliform units per 100 ml. There is no fecal coliform problem in the Santa Fe River.

Mr. Keyes asked if the comments received on the TMDL would be included in appendix C of the final document. Ms. Dors stated that they would be in the final document.

Ms. Dors stated that the Santa Fe River is designated as a marginal cold water and warm water fishery. It also has uses of livestock watering, irrigation and secondary contact.

Chairman Ritzma asked if the River is meeting its designated use. Ms. Dors stated that it is not meeting standards for DO and pH.

Mr. Whipple asked if the aluminum levels for Cimarron River, Rayado Creek and Cieneguilla Creek are achievable considering the uncertainty of the background levels. Mr. Hogge stated that with BMPs, he felt that the aluminum levels can be reached below both chronic and acute levels in the standards, but that additional data would be used in the future to assess background aluminum levels and that TMDLs are dynamic documents.

Mr. Keyes asked if aluminum would be included in the title and throughout the entire document. Ms. Dors stated that yes the title would read for example, Total Maximum Daily Load for Metals (Chronic Alumium) in Cieneguilla Creek.

Mr. Hutchinson asked if there is a monitoring element that goes along with a Section 319 project. Ms. Dors stated that monitoring does occur on Section 319 projects.

Mr. Hutchinson asked if the results of the monitoring are applied to the TMDL and analyzed to see if the BMPs are working before the five-year review. Mr. Hogge stated yes.

Mr. Johnson moved to formally approve and adopt into the State Water Quality Management Plan the TMDLs for the Santa Fe River, Cieneguilla Creek, Cimarron River and Rayado Creek. Mr. Olson seconded the motion. The motion passed unanimously.

Item 8 – Legislative Update.

Ms. Debbie Hughes, Executive Director of the New Mexico Association of Conservation Districts, stated that the Association has been working with the Water and Natural Resources Interim Committee on three proposed bills. The first is a \$500,000 appropriation for a Cost Share Program for Best Management Practices, sponsored by Representative Dona Irwin. The second is a \$1,538,000 appropriation of which \$600,000 would go to the Water Resources Research Institute to fund research to determine the habitat requirements of the aquatic species in the 6 river basins; \$138,160 would go to Agriculture Experiment Station to conduct science-based water use education and research for best management practices; \$300,640 for Cooperative Extension Research to do Water Quality Education and Information projects; and \$500,000 for Soil and Water Conservation Districts to carry out best management practices and watershed management and restoration projects by providing technical and financial incentives to landowners. Representative Joe Stell, Representative Andy Nunez and Senator Sue Wilson will sponsor the bill. The third bill is an amendment to the Water Quality Act to add a definition for "Credible Scientific Data" and also language to require the Water Quality Control Commission to approve the Section 303(d) list. Senator Sue Wilson and Representative Larry Larranaga will sponsor this amendment. Several Commissioners raised substantial concerns about the language of the proposed amendments to the Water Quality Act and specifically about the proposed definitions and requirement for credible scientific data.

Mr. Gutierrez stated that the Municipal League is looking at adding a member to the WQCC.

Mr. Whipple stated that the State Engineer Office and the Interstate Stream Commission would be seeking four legislative initiatives during the session. One is an appropriation of \$1.5 million to support completion of regional water planning. This includes regional water plans as well as a statewide water resources assessment and water conservation planning. The second initiative is \$1.4 million over the next four years to support populating the WATERS database. The WATERS database will include water rights abstracts and images of all the paper work in all the water right files of the State Engineer Office. The third initiative is that the State Engineer is seeking \$15.2 million over the next five years to support water rights adjudications. The fourth initiative is a request for \$2.1 million for activities related to compliance with environmental laws.

Chairman Ritzma stated that NMED would be seeking to change the Department's appeal process. Currently appeals are de novo reviews. Also, the Construction Programs Bureau would be seeking to provide funding for water systems, or to at least lower the interest rates on loans for communities.

Mr. Greg Lewis, Director of the Water and Wastewater Division of NMED, stated that the Department would be seeking to allow institutional controls over restricted land uses after they're in effect.

Item 9 – Other Business.

There was no other business to discuss.

Item 10 – Next Meeting

The next meeting of the WQCC will be held on January 9, 2001, at 9:00 a.m. in Santa Fe, New Mexico.

Item 11 – Hearing to consider amendments to the Utility Operator Certification Regulations (20.7.4 NMAC).

Mr. Keyes moved to adopt the amendments to the Utility Operator Certification Regulations 20.7.4 NMAC. Ms. Brandvold seconded the motion. The motion passed unanimously.

Mr. Hutchinson moved to have Counsel draft a Statement of Reasons. Mr. Keyes seconded the motion. The motion passed unanimously.

Mr. Keyes moved to adjourn the meeting.

Chairperson